TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 293

UNEXCELLED CHEMICAL CORPORATION, FORMERLY UNEXCELLED MANUFACTURING COMPANY, INC., PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WEIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 26, 1952
CERTIORARI GRANTED OCTOBER 27, 1952

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APPENDIX

COMPLAINT.

(Filed Jan. 27, 1950.)

IN THE
DISTRICT COURT OF THE UNITED STATES.
FOR THE DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA, Plaintiff, vs. UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC., Defendant.	Civil Action. No. 87-50.

I.

The plaintiff, United States of America, by the United States Attorney for the District of New Jersey, acting under the direction of the Attorney General, brings this action against the defendant, Unexcelled Chemical Corporation, formerly Unexcelled Manufacturing Company, Inc., under the Act of June 30, 1936 (49 Stat. 2036; 41 U. S. C. 35-45), hereinafter referred to as the Act.

II.

Jurisdiction is conferred upon this Court by Section 2 of the Act, and by Title 28, United States Code, Sec. 1345.

III.

Defendant, Unexcelled Manufacturing Company, Inc., was incorporated under the laws of the State of New York on February 6, 1915, and at all times since February 1916 and continuously through July 15, 1946, was authorized to transact business in the State of New Jersey under the name of Unexcelled Manufacturing Company, Inc., maintained its principal office at 15 Exchange Place, in the City of Jersey City, County of Hudson, and manufacturing establishments and places of business in the Township of Cranbury, County of Middlesex, and the City of New Brunswick, County of Middlesex, all in the State of New Jersey. On May 31, 1946, pursuant to the provisions of a certificate of change of name which was filed with the Secretary of State of the State of New York, the defendant has operated under the name of Unexcelled Chemical Corporation, and has at all times since July 15, 1946, been authorized to transact business in the State of New Jersey under the name of Unexcelled Chemical Corporation, where it still maintains the same principal office, manufacturing estabishments and places of business as aforesaid within the jurisdiction of this Court.

IV.

Pursuant to Section 5 of the Act, the Secretary of Labor, on April 17, 1947, issued a complaint, charging, among other things, that in the performance of certain specified government contracts subject to the Act, the defendant knowingly employed certain named underage male and female persons a total of 3,830 days in the performance of said contracts, and that by reason of the knowing and wrongful employment of said minors, the defendant was indebted to the United States of America in the sum of $10 for each day that said minors were employed. Pursuant to the Act, and in accordance with the Rules of Practice prescribed by the Secretary of Labor for proceedings under the Act, a hearing examiner was duly appointed and charged with the duty of conducting a hearing and rendering a decision embodying his findings of fact, conclusions of law and recommendations. Pursuant to notice given to all interested parties, the hearing examiner conducted a hearing, at which time the parties appeared and submitted evidence relating to the matters in issue, and on February 25, 1949, said hearing examiner, on the basis of the entire record, found and determined that the defendant, Unexcelled Chemical Corporation, formerly Unexcelled Manufacturing Company, Inc., had knowingly employed certain named minors in the performance of government contracts for a total of 1,560 days contrary to the provision of said contracts and of the Act, and ordered that it, the said defendant, pay the United States of America the sum of $15,600 as liquidated damages resulting therefrom. No petition for review was filed by the defendant with the Chief Hearing Examiner within the 20-day period prescribed by

the Rules of Practice, as amended, and, in accordance with said Rules, the decision of the Hearing Examiner became final upon the expiration of said period.

V.

By reason of the finding and decision made in the proceeding set forth in paragraph IV hereof, defendant, Unexcelled Chemical Corporation, formerly Unexcelled Manufacturing Company, Inc., is indebted to the United States of America in the sum of $15,600. Defendant has refused and still refuses to pay the same.

Wherefore, plaintiff demands judgment against the defendant for the sum of $15,600, with lawful interest and costs.

ALFRED E. MODARELLI,
United States Attorney for the
District of New Jersey,
Attorney for Plaintiff.

By JOHN J. BARRY,
Assistant United States Attorney.

ANSWER.

IN THE

DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA, Plaintiff, vs. UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC., Defendant.	Civil Action. File No. 87-50. Answer.

Defendant, by its Attorneys, Lindabury, Steelman & Lafferty, for its Answer to the complaint herein:

1. Denies each and every allegation of paragraph V in said complaint contained.

As a First Separate and Complete Defense, alleges:

2. That the defendant did not knowingly employ any male person under 16 years of age or any female person under 18 years of age in the performance of the contracts referred to in the complaint.

3. That the said findings set forth in paragraph IV of

the complaint are not supported by the preponderance of the evidence and are not conclusive against this defendant in this Court.

As a Second Separate and Complete Defense, alleges:

4. That the alleged wrongful employment of minors set forth in the complaint occurred more than two (2) years prior to the commencement of this action. (§6, 61 Stat. 87, 29 U. S. C. A. §255.)

WHEREFORE, the defendant demands judgment dismissing the complaint together with the costs and disbursements of this action.

LINDABURY, STEELMAN & LAFFERTY,
By WM. ROWE,
A Member of the Firm.
TOLBERT, NUNAN & BONGARD,
By TALBOT M. MALCOLM,
Attorneys for Defendant.

[ENDORSED]

Service of the within Answer is hereby acknowledged this 16th day of February, 1950.
By JOHN J. BARRY.

NOTICE OF MOTION FOR SUMMARY JUDGMENT.

(Filed March 13, 1950.)

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA, Plaintiff, vs. UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC., Defendant.	C-87-50. Notice of Motion for Summary Judgment.

To: Lindabury, Steelman and Lafferty, Esquires,
24 Commerce Street,
Newark 2, New Jersey.

PLEASE TAKE NOTICE, that on Monday, April 3, 1950 at 10:00 o'clock in the forenoon, or as soon thereafter as this matter may be heard, at the Federal Building, Federal Square, Newark, New Jersey, we shall move before the United States District Court for the entry of a summary judgment in favor of the plaintiff, United States of America, and against the defendant, Unexcelled Chemical Corporation, formerly Unexcelled Manufacturing Company, Inc.

Motion for Summary Judgment by Plaintiff

Attached hereto and made a part hereof, is the motion for summary judgment which will be presented and argued on that day and at that place.

ALFRED E. MODARELLI,
United States Attorney.
By JOHN J. BARRY,
Assistant United States Attorney.

MOTION FOR SUMMARY JUDGMENT BY PLAINTIFF.

(Filed March 13, 1950.)

UNITED STATES DISTRICT COURT.
DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA, Plaintiff. vs. UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC., Defendant.	C-87-50. Notice for Summary Judgment by Plaintiff.

Plaintiff moves the Court as follows: That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a

summary judgment in plaintiff's favor for the relief demanded in the complaint, on the ground that the affirmative defenses set forth in the defendant's answer are insufficient as a matter of law and that there is, therefore, no genuine issue as to any material fact and plaintiff is entitled to judgment as a matter of law; or in the alternative.

If summary judgment is not rendered in plaintiff's favor upon the whole case or for all the relief asked and a trial is necessary, that the Court, at the hearing on the motion, by examining the pleadings and evidence before it and by interrogating counsel, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted, and thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the actions as are just.

ALFRED E. MODARELLI,
United States Attorney.
By JOHN J. BARRY,
Assistant United States Attorney.

NOTICE OF MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT.
DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA, Plaintiff, vs. UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC., Defendant.	C-87-50. Notice of Motion for Summary Judgment.

To: HON. ALFRED E. MODARELLI, United States Attorney, Federal Building, Newark, New Jersey.

PLEASE TAKE NOTICE that on Monday, April 3, 1950, at 10:00 o'clock in the forenoon, or as soon thereafter as this matter may be heard, at the Federal Building, Federal Square, Newark, New Jersey, we shall move before the United States District Court for the entry of a summary judgment in favor of the defendant, UNEXCELLED CHEMICAL CORPORATION, formerly Unexcelled Manufacturing Company, Inc., against the plaintiff, UNITED STATES OF AMERICA.

Attached hereto and made a part hereof is the motion

for summary judgment which will be presented and argued on that day and at that place.

LINDABURY, STEELMAN & LAFFERTY,
By: WM. ROWE,
Attorneys for Defendant.

MOTION FOR SUMMARY JUDGMENT BY DEFENDANT.

UNITED STATES DISTRICT COURT.
DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA, Plaintiff, vs. UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC., Defendant.	C-87-50. Motion for Summary Judgment by Defendant.

Defendant moves the Court as follows: That it enter, pursuant to Rule 56 of the Federal Rules of Civil Practice, a summary judgment in defendant's favor dismissing the

complaint on the ground that the alleged cause of action set forth in the complaint accrued more than two years prior to the commencement of this action. (Sec. 6, 61 Stat. 87, 29 U. S. C. A., Sec. 255.)

LINDABURY, STEELMAN & LAFFERTY,
By WM. ROWE,
Attorneys for Defendant.

[ENDORSED]

Service of the within Notice and Motion for Summary Judgment is hereby acknowledged, this 20th day of March, 1950.

JOHN J. BARRY,
Assistant U. S. Attorney.

OPINION.

(Filed June 22, 1951.)

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA, Plaintiff, vs. UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC., Defendant.	Civil Action No. 87-50. On Motion for Summary Judgment. Opinion.

APPEARANCES:

ALFRED E. MODARELLI, Esq., United States Attorney;

JOHN J. BARRY, Esq., Assistant United States Attorney, for the Government.

LINDABURY, STEELMAN & LAFFERTY, Esqs., Attorneys for Defendant.

TALBOT M. MALCOLM, Esq., and DOUGLAS H. THAYER, Esq., of Counsel.

Opinion

MEANEY, District Judge.

This is an action to recover liquidated statutory damages allegedly due the United States under the Walsh-Healey Act, 41 U. S. C. §35 et seq. Defendant moves for summary judgment on the ground that the action is barred by the two-year period of limitation prescribed by the Portal to Portal Act, 29 U. S. C. §255.

The pleadings disclose as undisputed facts that on April 17, 1947 the Secretary of Labor commenced an administrative proceeding charging defendant with knowingly employing minors in violation of the Walsh-Healey Act. After hearing, the trial examiner on February 25, 1949, found that defendant had knowingly employed certain minors and ordered that defendant pay the United States $15,600. as liquidated damages. The present action was instituted on January 27, 1950. The decision of the trial examiner indicates that the employment of the alleged minors occurred during the years 1942 to 1945. The question arises therefore whether the Government's alleged cause of action accrued at the time the alleged violations occurred, or at the time the trial examiner rendered his decision.

The Walsh-Healey Act, 41 U. S. C. §35, requires that contracts with the Government for the manufacture of materials in any amount exceeding $10,000. shall contain, among other representations and stipulations, the following: "That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract: * * *" The statute further provides, 41 U. S. C. §36, that the breach or violation of such a stipulation "* * * shall render the party responsible therefor liable to the

United States of America for liquidated damages, in addition to damages for any other breach of such contract, the sum of $10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such contract, * * *". This section provides also that any sums due the United States may be recovered in suits brought in the name of the United States by the Attorney General. The Secretary of Labor, or an impartial representative designated by him, is authorized by the Act, 41 U. S. C. §39, to hold hearings and make findings of fact with respect to alleged violations.

In *United States v. Craddock-Terry Shoe Corporation* (D. C. W. D. Va. 1949), 84 F. Supp. 842, it was stated by way of dictum that the time when the limitation of the Portal to Portal Act begins to run is the date of the administrative determination. This view was based on the reasoning that the statute contemplated administrative proceedings as a prerequisite to resort to the courts. The Court then went on to decide that the administrative findings were not supported by a preponderance of the evidence. On appeal the decision was affirmed with respect to the administrative findings, 178 F. 2d 760; however, the Court of Appeals expressly refrained from passing on the efficiency of the defense of limitations. In *United States v. Hudgins-Dize Co.* (D. C. E. D. Va. 1949), 83 F. Supp. 593, 597, it was held that "* * * the time limitation, even if applicable to the United States, runs only from the termination of the administrative proceedings, * * * because until that determination the United States had no cause of action." See also: *United States v. Lance, Inc.* (D. C. W. D. N. C. 1951), 95 F. Supp. 327; *United States v. Sweet Briar* (D. C. W. D. S. C. 1950), 92 F. Supp. 777, 781.

Although the above decisions are persuasive, the Court feels that the contrary result is compelled by reason of the recent decision of the Court of Appeals for this circuit in the case of *McMahon vs. United States* (3 Cir. 1950), 186 F. 2d 227. There a similar problem was considered arising under the Suits in Admiralty Act, 46 U. S. C. §741, et seq., and the Clarification Act, 50 U. S. C. App. §1291, et seq. In that case it was said, "A cause of action is a legal wrong, the thing which becomes a ground for suit." The Court ruled the causes of action therein arose at the time of injury and were barred by the two-year limitation contained in the Suits in Admiralty Act even though the right of action, i. e. the right to institute suit, did not accrue until the termination of administrative proceedings.

The basic legal wrong of which the Government complains herein is the employment of minors in breach of the stipulation required by statute. Such a breach immediately rendered the contractor liable to the Government for liquidated damages. It was at that time that the causes of action arose. Whether or not the United States could have immediately instituted suit is not material since under the Portal to Portal Act, as under the Suits in Admiralty Act, it is the "cause of action" not the "right of action" which is barred by the statutory limitation.

Since it is clear, in view of the above analysis, that this action was commenced more than two years after the causes of action arose, defendant's motion will be granted.

An order may be submitted.

ORDER FOR JUDGMENT.

(Filed June 29, 1951.)

UNITED STATES DISTRICT COURT.
DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA, Plaintiff, vs. UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC., Defendant.	Civil Action No. 87-50. On Motion for Summary Judgment. Order for Judgment.

This cause came on for hearing on cross-motions of the plaintiff and defendant for summary judgment, the motion for the plaintiff being on the ground that the affirmative defenses in the answer were insufficient in law and the motion of the defendant being on the ground that the action was not timely brought and is barred by Sec. 6, 61 Stat. 87, 29 U. S. C. A. Sec. 255, and this Court having heard JOHN J. BARRY, Esq., Assistant United States Attorney, of counsel for ALFRED E. MODARELLI, Esq., then United States Attorney, for the plaintiff, and TALBOT M. MAL-

Order for Judgment

COLM, Esq., of counsel for LINDABURY, STEELMAN & LAFFERTY, Esqs., for the defendant, and the Court having rendered its opinion denying the motion of the plaintiff and granting the motion of the defendant, it is

ORDERED that the motion of the plaintiff for judgment be and the same hereby is denied; and it is

FURTHER ORDERED that the motion of the defendant for judgment dismissing the complaint be and the same is hereby granted and the complaint be and it hereby is dismissed; and

FURTHER ORDERED that judgment be entered dismissing the complaint without costs.

/s/ THOMAS F. MEANEY,
United States District Judge.

June 29th, 1951.

Notice of Appeal

NOTICE OF APPEAL.

(Filed Aug. 20, 1951.)

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA, Plaintiff, vs. UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC., Defendant.	Civil Action No. 87-50. Notice of Appeal.

Notice is hereby given that the United States of America, plaintiff above named, hereby appeals to the United States Court of Appeals for the Third Circuit from the Final Judgment entered in this action on June 29, 1951.

GROVER C. RICHMAN, JR.,
United States Attorney.
By JOHN J. BARRY,
Assistant United States Attorney.

Order

ORDER.

(Filed Sept. 18, 1951.)

UNITED STATES DISTRICT COURT.
DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA, Plaintiff, vs. UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC., Defendant.	Civil 87-50. Order.

Upon the motion of Grover C. Richman, Jr., United States Attorney for the District of New Jersey and upon good cause having been shown,

It is on this 18th day of September 1951, pursuant to Rule 73 (g) of the Federal Rules of Civil Procedure ORDERED that the time within which the Clerk of the United States District Court for the District of New Jersey is to forward the record on appeal in this cause to the United States Court of Appeals for the Third Circuit be and the same is hereby extended to November 16, 1951.

THOMAS F. MEANEY,
Judge,
United States District Court.

ORDER.

UNITED STATES COURT OF APPEALS.
FOR THE THIRD CIRCUIT.

(Case No. 10,612.)

UNITED STATES OF AMERICA, Plaintiff-Appellant, vs. UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC., Defendant-Appellee.	On Appeal. Order.

Upon the motion of Grover C. Richman, Jr., United States Attorney for the District of New Jersey, and the annexed consent of counsel for the defendant-appellee and there being good cause shown for the entry of this order;

It is on this 13th day of December 1951, ORDERED that the time for filing the brief of the plaintiff-appellant be and is hereby extended to January 4, 1952.

McLAUGHLIN,
Judge.

We hereby consent to the entry of the above Order.

LINDABURY, STEELMAN & LAFFERTY,
Attorneys for Defendant-Appellee.
By WILLIAM ROWE,
A Member of the Firm.

DECISION OF THE HEARING EXAMINER.

UNITED STATES OF AMERICA.

WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
OF THE
UNITED STATES DEPARTMENT OF LABOR.

(No. PC-352.)

In the Matter of UNEXCELLED MANUFACTURING CO., INC., now known as UNEXCELLED CHEMICAL CORPORATION, Respondent.	Decision of the Hearing Examiner

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BEFORE: CLIFFORD P. GRANT, Hearing Examiner.

APPEARANCES:

JOHN A. HUGHES, Esq. and FRANCIS V. LaRUFFA, Esq., for the Government.

A. HARRY MOORE, Esq. and THOMAS E. LYNCH, Esq., for the Respondent.

This proceeding under Section 5 of the Act of June 30, 1936 (49 Stat. 2036; U. S. C. ti. 41, secs. 35-45), known as the Walsh-Healey Public Contracts Act and hereinafter referred to as the Act, was initiated upon the issuance by the Secretary of Labor of a complaint[1] alleging, in substance, that in the performance of certain Government contracts subject to and containing the representations and stipulations of the Act, the respondent knowingly employed boys and girls under sixteen years of age in breach of the contracts and in violation of the Act, and knowingly employed girls under eighteen years of age contrary to the provisions of the contracts and to the terms of exemption orders permitting their employment.[2]

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[1] The complaint was filed April 22, 1947; other principal docket entries are: Answer filed June 13, 1947; Notices of Motions to Amend Complaint filed August 9, 1947 and September 12, 1947; Transcript of Hearing held in Trenton, New Jersey, on September 16 and 17, 1947, filed October 6, 1947; Transcript of Hearing held Asbury Park, New Jersey, on September 24 and 25, 1947, filed October 8, 1947; Transcript of Hearing held in New York, New York, on October 6 and 7, 1947, filed October 13, 1947.

[2] One of the stipulations required by Section 1 of the Act to be included in contracts subject thereto prohibits outright the employment by the contractor of boys under sixteen years of age and girls under eighteen years of age in the performance of such contracts. Section 2 of the Act provides in part that a breach or violation of the child-labor stipulation in a contract shall render the party responsible therefor liable to the United States of America for liquidated damages in the sum of $10 per day for each underage employee knowingly employed in contract performance.

By order dated April 21, 1942 applicable to given industries, and again by order dated November 11, 1942 applicable to all industries,

Decision of the Hearing Examiner

In its answer the respondent denies the substantive allegations of the complaint and affirmatively alleges three separate defenses: (1) that it was without knowledge that the employees named in the complaint were below the required age, (2) that any act or omission complained of was in good faith in conformity with and in reliance on the administrative regulations, orders, rules and interpretations of various agencies of the United States, in that the employees named were first interviewed by representatives of the United States Employment Service and were then duly certified to the respondent as being available and able to undertake employment with the respondent pursuant to the rules and regulations of the War Manpower Commission, and (3) that the girls listed in paragraph VII of the complaint were employed in conformity with and in reliance on the aforementioned exemption orders, that none of the conditions of the exemption orders were violated and further, that the employees last referred to were not employed in an occupation in or about any plant manu-

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the Secretary of Labor relaxed the age limitations and granted an exemption from the application of Sections 1 and 2 of the Act to the extent of permitting the employment in contract performance of girls sixteen and seventeen years of age upon compliance with each of six enumerated conditions drafted for the protection of the girls affected.

Paragraph VI of the complaint lists the names of boys and girls alleged to have been knowingly employed in contract performance while under sixteen years of age. Paragraph VII lists the girls alleged to have been so employed while under eighteen years "in occupations declared to be hazardous under the Fair Labor Standards Act of 1938", prohibited by the third condition of the aforementioned exemption orders, quoted as follows:

> "(3) That no girl under eighteen years of age shall be employed in any operation or occupation which, under the Fair Labor Standards Act or under any State law or administrative ruling, is determined to be hazardous in nature or dangerous to health."

At the outset of the hearing (Tr. p. 8) paragraph VII of the complaint was amended on motion of Government counsel to allege that the girls under eighteen were also employed in occupations declared to be hazardous under the laws of the State of New Jersey, contrary to the same condition quoted above; and further, that they were employed between the hours of 10:00 P. M. and 6 A. M., contrary to the second condition of the exemption orders.

facturing explosives or articles containing explosive components[3].

Upon the entire record, including the pleadings, testimony, exhibits and stipulations of counsel, I issue the following decision embodying my findings of fact and conclusions of law.

1. The respondent Unexcelled Manufacturing Company, Inc., was incorporated under the laws of the State of New York in February, 1915. At all times since February 1916 and continuously through July 15, 1946, respondent was authorized to transact business in the State of New Jersey under the name of Unexcelled Manufacturing Company, Inc. It maintained its principal office at 15 Exchange Place, in the City of Jersey City, County of Hudson, and manufacturing establishments in the Township of Cranbury, County of Middlesex, and in the City of New Brunswick, County of Middlesex, all in the State of New Jersey. Pursuant to a certificate of change of name filed with the Secretary of State of the State of New York, respondent has operated under the name of Unexcelled Chemical Corporation and at all times since July 15, 1946, has been authorized to transact business in the State of New Jersey under that name, maintaining its principal office and manufacturing establishments at the same locations.

2. That respondent was awarded by the Government of the United States the following contracts, on the dates, in the amounts, and for the commodities or purposes set opposite each of them:

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[3] Pursuant to authority delegated by Section 3(1) of the Fair Labor Standards Act, the Chief of the Children's Bureau in the Department of Labor issued Hazardous Occupations Order No. 1, effective July 1, 1939, declaring all occupations in or about any plant manufacturing explosives or articles containing explosive components to be particularly hazardous for the employment of minors between 16 and 18 years of age. The revision effective February 13, 1943, delimiting application of the order to plants manufacturing small-arms ammunition, is not material here.

Contract No.	*Date of Award*	*Amount*	*Commodity or Purpose*
NOs-LL95813	2-11-42	$1,740,000	Loading and assembly of 20 mm. anti-aircraft ammunition, high explosive tracer type.
NXso-LL7941	9-28-42	576,000	Loading and assembly of 20 mm. anti-aircraft ammunition, high explosive tracer type.
NOrd-3745	6-9-43	1,300,000	Loading and assembly of 20 mm. H.E.I. (Incendiary) ammunition.
NOrd-3792	6-5-43	45,000	Incendiary pellets and preparation of compound for pelleting 20 mm. ammunition.
NOrd-4717	10-30-43	52,000	Incendiary pellets for 20 mm. ammunition.
NOrd-6084	4-29-44	1,394,400	Loading and assembly of 20 mm. H.E.I. ammunition.
NOrd-6567	7-6-44	561,345	Aircraft engine starter cartridges.
NOrd-6793	8-1-44	59,400	Incendiary pellets for 20 mm. H.E.I. ammunition.
W-30-070-CWS-697	8-21-44	450,385.68	Loading of fuse, British No. 42, Mark IV: Assembly, loading and packing of capsules for the fuses; and Assembly, loading and packing of burster and adapter.

W-30-069-ORD-2170	9-4-44	497,700	Signal, distress, 2 star red T-49.
W-30-070-CWS-1030	11-24-44	56,250	Loading of powder bags.
W-30-070-CWS-1240	5-12-45	1,532,160	Bomb clusters, incendiary AN-M69.
W-12-083-CWS-13	4-17-45	209,484	Boosters and bursters for bomb MK-1, SPD.
W-30-070-CWS-1434	6-18-45	99,900	Loading, packing, boxing and marking of fuses, delay; also, tools, dies, etc.
W-30-070-CWS-1502	8-11-45	92,400	Loading, packing, boxing and marking of fuses, instantaneous.

Contract No.	*Date of Award*	*Amount*	*Commodity or Purpose*
W-672-ORD-2848	7-26-40	101,640	Ground signals.
W-613-ORD-1504	10-22-40	110,656	Bombs, photoflash, M23.
W-613-ORD-1569	10-13-41	1,462,500	Flares, aircraft, parachute, M26, less fuses.
W-613-ORD-1695	3-7-42	1,477,500	Flares, aircraft, parachute, M26.
W-613-ORD-2118	6-13-42	4,881,750	Flares, aircraft, parachute, M26, assembly complete (less fuse).
W-670-ORD-2814	9-9-42	296,400	Shells, illuminating, M83, body, assembly, complete (loaded) 60 mm. mortars, M1 and M2.
W-613-ORD-4685	5-5-43	157,500	Flares, aircraft, parachute, AN-M26.

W-613-ORD-4686	5-5-43	48,750	Flares, aircraft, parachute, M-26, renovation.
W-613-ORD-4771	5-21-43	515,475	Shells, illuminating, M-83, body assembly, complete (loaded), 60 mm. mortars M-1 and M-2.
W-613-ORD-5122	8-12-43	645,000	Ground signals, white star, parachute M17A1.
W-30-069-ORD-747	1-31-44	20,000	Flares, ground, red T9 and yellow T10.
W-30-069-ORD-844	2-17-44	61,250	Superflash and sound (dago) bombs.
W-30-069-ORD-984	3-11-44	488,000	Shells, illuminating, body assembly, complete, loaded, 60 mm. mortar M83.
W-30-070-CWS-620	4-15-44	375,375	Ignition cylinders for portable flame throwers.
W-30-069-ORD-2277	11-30-44	276,030	Leaflet bombs T1; also expelling charges.
W-30-070-CWS-1041	12-9-44	337,500	Ignition cylinders for portable flame throwers.
W-30-069-ORD-2669	11-25-44	23,000	Superflash and sound (dago) bombs.
NOrd 5743	3-14-44	77,500	Salvaging of 20 mm. and 40 mm. primed cartridge cases.

3. The thirty-three contracts[4] listed above were subject to and contained, either in text form or by reference, the representations and stipulations of the Act.

4. The following named female persons were knowingly employed by the respondent in the performance of one or more of the thirty-three Government contracts listed above while under sixteen years of age, for the number of days and during the periods set opposite their names:

Dorothy Armstead	Sixteen (16) days in the period from July 31, 1945, to August 14, 1945.
Clara Baxter	Forty-two (42) days in the period from June 26, 1945, to August 14, 1945.
Anna Mae Blount	Two (2) days in the payroll week ending July 24, 1945.
Dolores Olabell Eure	Ten (10) days in the period from July 24, 1945, to August 7, 1945.
Lucille Anna Haynes	Two (2) days, on February 21, 1944, and February 22, 1944.
Florence Holliday	Twenty-one (21) days in the period from July 10, 1945, to August 7, 1945.

[4] Certified copies of the thirty-three contracts are in evidence in this proceeding as Government Exhibits 1-A through 1-CG, inclusive. Three additional contracts, Nos. DA NOrd-(F)1089, NOrd-(F)1269, and W-30-070-CWS-1143, listed in the complaint with those received in evidence, were eliminated from the case by agreement at a pre-hearing conference held in this matter on September 4, 1947. Near the conclusion of the hearing it was further agreed that a fourth contract, No. NOrd-6083, the remaining contract of the thirty-seven originally listed in the complaint and the last of the four contracts which the answer of the respondent specifically alleged as not being subject to the Act, could also be eliminated from the case without affecting the number of days agreed upon as the number of days which given employees, whose names will appear in the next two enumerated findings of fact, were employed in contract performance (Tr. pp. 589-594). A certified copy of Contract No. NOrd-6083 is in evidence as Government Exhibit No. 2.

Frizella Inman	Twenty-four (24) days in the period from July 10, 1945, to August 7, 1945.
Bernice McCoy	Seventeen (17) days in the period from July 24, 1945, to August 7, 1945.[5]
Ethel Morrison	Ten (10) days in the period from July 24, 1945, to August 7, 1945.
	Total—144 days.

The nine employees were born on the respective dates[6] appearing beside their names, two being fourteen years of age and seven being fifteen years of age during their respective periods of employment on the Government contracts:

Dorothy Armstead	February 26, 1930.
Clara Baxter	March 26, 1930.
Anna Mae Blount	August 25, 1930.
Dolores Olabell Eure	April 8, 1931.
Lucille Anna Haynes	August 11, 1928.
Florence Holliday	November 16, 1929.
Frizella Inman	December 18, 1929.
Bernice McCoy	March 18, 1930.
Ethel Morrison	January 13, 1930.

[5] Although the period from July 24, 1945 to August 7, 1945 does not include as many as seventeen days, as alleged in the complaint, the discrepancy is not material. The number of days this and other employees were employed in contract performance is agreed upon (Tr. pp. 589-594) and accordingly is the basis for measuring respondent's liability in liquidated damages. The periods of employment, on the other hand, are merely descriptive and are of secondary importance.

[6] All of the nine employees testified to their dates of birth which have been verified by certified copies of State birth records submitted by the Government for all except one, Lucille Anna Haynes, for whom no record of birth was found and whose testimony is consequently the sole evidence of her date of birth. The birth certificates of the eight employees are included among those sent to me by counsel for the Government after the close of the hearing in accordance with an understanding to that effect (Tr. pp. 639, 641) and received without objection as Government Exhibit No. 9.

In a series of earlier decisions in proceedings of this kind the Secretary of Labor has interpreted the term "knowingly" in Section 2 of the Act and has defined the obligation of the contractor not to employ child labor and the circumstances under which liability attaches for his failure to meet that obligation.[7] The pertinent facts relating to the hiring of each of the nine girls named above are much the same. By their own testimony all but one, Ethel Morrison, who applied directly at respondent's plant, first called at the office of the United States Employment Ser-

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[7] "'Knowingly' in Section 2 modified 'employed' and must be and has been interpreted to mean knowledge of facts relating to the employment of boys under 16 and girls under 18 on Government contracts." Decision of the Secretary, *In the Matter of the Winkley Company*, No. P. C.-239, March 10, 1947.

"The inquiry on the issue of knowing employment is whether respondents knew or should have known that the girls, as to whom the violations occurred, were under 18." Decision of the Secretary, *In the Matter of American Furnace Company*, No. P. C.-220, March 10, 1947.

"The sense of the term 'knowingly' in Section 2 is in no way as highly restrictive and unreal as respondent urges. The term means considerably more than affirmative knowledge present in the mind of respondent's principal officer. Its meaning is derived from the nature of the obligation under the Act not to hire child labor. This obligation includes the responsibility to take measures to comply with the child labor provisions. The measures which must be taken are those which a careful contractor would take. A contractor whose violation of the child labor provision is traceable to failure to observe this standard of care cannot say that the minor was not knowingly employed. *In the Matter of Philip Low*, P. C.-110, April 19, 1946; *In the Matter of Sitterding, Carneal, Davis Co., Inc.*, P. C.-193, July 6, 1945; *In the Matter of Len J. Bray*, P. C.-150, May 3, 1945; *In the Matter of H. T. Barnes and Leroy Jones*, P. C.-163, April 17, 1945." Decision of the Secretary, *In the Matter of Sonora Radio & Television Co.*, No. P. C.-173, July 25, 1946.

"This obligation [not to employ underage minors] carries with it the duty to take measures to comply with the stipulation. When facts come to the attention of the contractor which would create a suspicion in the mind of a careful contractor that the obligation is not being performed, the contractor has a duty to exercise reasonable care to make sure that he is not violating his contract. If he fails to do so, he cannot then say that the children were not knowingly employed." Decision of the Secretary, *In the Matter of Sitterding, Carneal, Davis Co., Inc., supra.*

"If the situation is one in which a careful contractor would have investigated, the respondent is required to investigate. These situations generally involve presence of facts which would have caused the careful contractor to suspect that the applicant's age might be below the minimum. That the facts would not have caused him to believe or even to suspect that the applicant *was* below the required age is no answer to the duty to observe the prohibition if those facts would have raised a suspicion that the applicant *may have been* under age." Decision of the Secretary, *In the Matter of Rogers Tent and Awning Company*, No. P. C.-170, May 8, 1946.

Like language appears in the Secretary's decisions, *In the Matter of Wilkins Trunk Manufacturing Company, et al.*, No. P. C.-206, April 22, 1946; *In the Matter of Bauer Pottery Company, Inc.*, No. P. C.-318, March 15, 1948; *In the Matter of Bibb Manufacturing Company*, No. P. C.-191, November 6, 1947.

vice where they were given a so-called "referral card" showing that the applicant was being referred to respondent for employment in response to its request and certifying "that the hiring of this worker for the employment specified above is in accordance with the War Manpower Commission Employment Stabilization Program, and no accompanying statement of availability is required." Some several of the girls testified either that they were asked in the office of the Employment Service how old they were or were told they had to be eighteen to work in respondent's plant. Those who were so asked or told represented to the person interviewing them that they were eighteen. All nine of them, in applying shortly thereafter at the employment or personnel office of the respondent, represented that they were eighteen years of age. These and other underage applicants were not asked by employing officers of the respondent to produce birth certificates or other verification of age. It is quite evident that it was the practice to employ applicants without questioning the age of any who represented that they were eighteen or furnished a date of birth indicating that they had attained the age of eighteen years.[8] In the case of these nine, their misrepresentation of age should not excuse the respondent of liability in liquidated damages for their employment. From my observation of each of them in the hearing room and on the witness stand, I am convinced that they were of such youthful appearance that a careful or reasonably prudent contractor, mindful of his obligations under the Act, would not have been content to take their uncorroborated statements as conclusive of their age, but would have made further inquiry to ascertain whether they were old

[8] Respondent's Exhibit No. 1 consists of the employment applications of forty-three employees and the Employment Service referral cards for most of them, all that respondent could produce for the sixty-four employees who appeared and testified at the hearing. Of the nine girls presently under consideration, the exhibit includes the employment applications and referral cards of two, Dorothy Armstead and Lucille Anna Haynes.

enough to be employed.[9] Their appearance was such, in other words, to put the respondent on notice that they were or may have been under eighteen years of age, the statutory minimum. Since they were not of age eligible for employment under the exemption orders hereinbefore mentioned, the orders have no application and whether or

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[9] "The youthful apearance of an applicant for employment is a fact which would arouse suspicion in the mind of the careful contrator that he may not be performing his contractual obligation not to employ underage children. If the contractor disregards this fact he cannot avoid liability by asserting his lack of knowledge of the ages of his employees. He must then make further inquiry.

"In order to resolve the suspicion caused by notice of such facts as youthful appearance, the contractor is not required to obtain some specific type of proof of age. But there must be something more than mere statements of age by the applicant or by his parents." Decision of the Secretary, *In the Matter of Sitterding, Carneal, Davis Company, Inc., et al.*, No. P. C.-193, dated July 5, 1945.

"The Trial Examiner had the opportunity to observe this boy at the trial and determined that even at that date his appearance was so youthful that a careful contractor would not have hired him without first checking with reliable sources to determine his true age. This duty to inquire obviously cannot be met by merely asking the child whether he is old enough to work. Responsibility for the performance of the child labor provision is placed on the contractor, not on the child. Nor is it sufficient to check the child's representation with his parents or friends. Verification of age consists of something more than mere statements from persons either so interested or so inexpert as parent or friend. It consists of checking with responsible and impartial sources of record, such as those maintained by churches, government and schools and including those made contemporaneously with the child's birth, such as an entry in a family Bible. Since respondent had reason to suspect that the boy may have overstated his age and since it failed to make reasonable inquiry to determine his true age, it must be held to have knowingly employed him." Decision of the Secretary, *In the Matter of Craddock-Terry Shoe Corporation*, No. P. C.-330, dated April 7, 1948.

"The only step which respondent ever took was to ask Emanuel for his age at some point after the boy had begun to work. The minor was the least reliable of the sources of information which were available to respondent and the duty to investigate was in no way discharged by the adoption of methods as casual and inconsequential as this." Decision of the Secretary, *In the Matter of Rogers Tent and Awning Company*, No. P. C.-170, dated May 8, 1946.

not their employment conformed to the conditions specified therein is immaterial.

The referral by the United States Employment Service of applicants who later proved to be underage has been the subject of decision by the Administrator in another of the earlier proceedings wherein he rejected the argument of the contractor that such referral precluded a finding of knowing employment.[10] Since the issuance of that decision, Congress has enacted the Portal-to-Portal Act of 1947.[11] Respondent's second separate defense in its answer to the complaint seeks to invoke the provisions of Section 9 of that Act[12] in an attempt to avoid liability for the employment of minors referred by the United States Employment Service. Section 9, however, by its terms relates only to liabilities resulting from the failure of an employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act and the Walsh-Healey Public Contracts Act. Moreover, the respondent has not shown nor do I believe it can show that its employment of child labor, whatever its good faith reliance thereon, was in

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[10] *In the Matter of T. M. Wise, individually and doing business as Southern Tent and Awning Company,* No. P. C.-269, September 30, 1946.

[11] Enacted May 14, 1947.

[12] Section 9 reads: "In any action or proceeding commenced prior to on or after the date of the enactment of this Act based on any act or omission prior to the date of the enactment of this Act, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any administrative regulation, order, ruling, approval, or interpretation, of any agency of the United States, or any administrative practice or enforcement policy of any such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect."

actual conformity with an administrative regulation, order, ruling, approval, interpretation, practice or enforcement policy of an agency[13] of the United States.

Seven other employees named in paragraph VI of the complaint as having been employed in performance of the Government contracts while under sixteen years of age testified as witnesses at the hearing. All of them, Clara Darby, Lois Livingston, Bloneva Parker, Clarence Robinson, Wilbur Stokes, Magalene Thomas and Mary Whiteside, are shown by competent evidence to have been in fact under sixteen years of age during the periods and for the number of days alleged in the complaint and agreed upon as the periods and days of their employment in performance of the contracts hereinbefore listed (Tr., pp. 589-594).[14] The circumstances under which they were hired are in all material respects the same as those already described. But in their case their appearance and demeanor in the hearing room and on the witness stand was not such as to enable me to say that a careful contractor would have suspected that they were under eighteen years of age. In the absence of any other facts or circumstances evidencing knowledge, either actual or constructive, on the part of respondent that they were not of age, I conclude that none of these seven were knowingly employed within the meaning of Section 2 of the Act.

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[13] For definition of "agency" as used in Section 9 of the Portal Act, see *Jackson* v. *Northwest Airlines*, 76 Fed. Supp. 121.

[14] Government Exhibit No. 9 includes birth certificates evidencing the dates of birth of the seven employees, except Magalene Thomas, whose birth certificate was introduced and received at the hearing as Government Exhibit No. 5. Only part of the periods of employment alleged in the complaint for two of the employees, Clara Darby and Bloneva Parker, preceded their sixteenth birthday. Clara Darby was born on April 29, 1929. According to her birth certificate, the most reliable evidence of her birth date, Bloneva Parker was born on November 23, 1928. The entire periods of employment alleged in paragraph VI of the complaint for the remaining five employees transpired while they were under sixteen years of age.

5. The following named female persons among those listed in paragraph VII of the complaint were knowingly employed by the respondent in the performance of one or more of the thirty-three Government contracts while sixteen and seventeen years of age, for the number of days and during the periods set opposite their names. The respective days of their births,[15] as I find them to be, are also given and appear below the names of each:

Mildred Frances Braxton (Mildred Braxton Shack) Born: October 5, 1928.	Forty-four (44) days in the period from June 26, 1945, to August 14, 1945.
Marjorie E. Haywood (Marjorie Hayward) Born: December 5, 1928.	Twenty-eight (28) days in the period from July 17, 1945, to August 21, 1945.
Kay Louise Hemstead (Kay Louise Hempstead) Born: September 19, 1927.	Eight (8) days in the period from July 3, 1945, to July 10, 1945.
Flora Hester Born: November 6, 1926.	Three (3) days in the payroll week ending April 18, 1944.
Margaret Johnson Born: December 15, 1928.	Ten (10) days in July, 1945.
Carrie Belle Legette Born: February 26, 1928.	Thirty-eight (38) days in the period from June 19, 1945, to August 17, 1945.
Arina McKellar (Arlena McKellar) Born: October 10, 1927.	Seven (7) days in the period from July 24, 1945, to July 31, 1945.

[15] The dates are taken from certified copies of State birth records for all except Lucretia Perry and Maggie Berry for whom no record of birth was found and whose dates of birth are taken from their testimony. The birth certificates of Marjorie Hayward and Lois Wertzs were read into the record at the hearing (Tr. pp. 79, 206) in lieu of their introduction as exhibits. The birth certificates of all the others are included in Government Exhibit No. 9.

Elenor McLaughlin (Eleanor McLaughlin Jameson) Born: August 5, 1925.	One hundred forty-seven (147) days in the period from November 3, 1942, to July 27, 1943.
Klyda Grace Mahoney Born: December 29, 1927.	Twenty (20) days in the period from July 14, 1945, to August 6, 1945.
Jean Phyllis Mariner (Mrs. Donald Stewart) Born: July 31, 1927.	Three hundred fourteen (314) days in the period from July 4, 1944, to July 29, 1945.
Lucretia Perry (Lucretia James) Born: October 31, 1927.	Eleven (11) days in the period from April 18, 1944, to May 2, 1944.
Audrey Ramsey Born: April 6, 1927.	Forty-one (41) days in the period from February 29, 1944, to April 18, 1944.
Beulah Urstadt Seefeld Born: August 9, 1925.	Eighty-two (82) days in the period from December 8, 1942, to August 7, 1943.
Doris Seefeld Born: October 17, 1927.	Twenty-three (23) days in the period from July 21, 1945, to August 14, 1945.
Evelyn Dorothy Soden Born: November 23, 1927.	Three hundred ninety (390) days in the period from May 16, 1944, to November 11, 1945.
Dorothy Steen (Dorothy Steen Skelding) Born: January 2, 1927.	Six (6) days in the period from February 15, 1944, to February 22, 1944.
Rose Swirski Born: March 17, 1926.	One hundred five (105) days in the period from November 3, 1942, to March 30, 1943.

Lois Wirtz (Lois Wertzs) Born: December 25, 1925.	Forty-seven (47) days in the period from October 19, 1943, to December 21, 1943.
Shirley Eileen Yorkus (Dorothy Shirley Irene Yorkus) Born: October 12, 1925.	Thirty-one (31) days in the period from May 11, 1943, to June 22, 1943.
Maggie Berry Born: December 31, 1927.	Five (5) days in the payroll week ending August 14, 1945.
Elenor Marie Stapon Born: May 9, 1926.	Sixteen (16) days in the period beginning with the payroll week ending March 9, 1943, through the payroll week ending March 30, 1943.
Betty Yorkus Born: February 18, 1927.	Forty (40) days in the period beginning with the payroll week ending October 26, 1943 through the payroll week ending January 4, 1944.
	Total—1,416 days.

All of the foregoing employment took place in the establishment of the respondent at Cranbury, New Jersey, except for the entire employment of Maggie Berry and a portion of the employment of Betty Yorkus in the firm's establishment at New Brunswick, New Jersey. Each of the two establishments, including all of the buildings and structures of which it is composed, constituted a "plant manufacturing explosives or articles containing explosive components" as the term is used in Hazardous Occupations Order No. 1, in its original form effective July 1, 1939, and as amended thereafter (Tr., pp. 621-4). All occupations in or about such plants having been declared under the Fair

Labor Standards Act to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years, the employment of the above-named girls throughout the respective periods they were employed while 16 and 17 years of age was contrary to the third condition of the Secretary's exemption orders of April 21, 1942, and November 11, 1942. Noncompliance with any one of the six conditions of the exemption orders rendered the orders inoperative and the employment of the girls illegal under Section 1(d) of the Act. Decision of the Secretary, *In the Matter of Sonora Radio and Television Company,* supra. The evidence establishes, nevertheless, that many of them[16] were employed on the night shift after 10:00 p. m., contrary to the second condition of the exemption orders.

The hiring of the girls 16 and 17 years of age followed the same general pattern of those under 16. Most of them, as shown by their testimony and the referral cards in Respondent's Exhibit No. 1, were referred to the respondent by the United States Employment Service. In every instance except a few to be mentioned later, the employee represented that she was 18 years of age or over and gave a corresponding birth date. They were not required or requested to furnish anything in verification of their representations of age before being hired.

In the case of seventeen, or all but five of the twenty-two girls, the finding that they were knowingly employed rests upon their youthful appearance which distinguished them

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[16] Mildred Frances Braxton, Kay Louise Hemstead, Flora Hester, Margaret Johnson, Carrie Belle Legette, Arine McKellar, Klyda Grace Mahoney, Lucretia Perry, Audrey Ramsey, Buelah Seefeld, Doris Seefeld, Dorothy Steen and Maggie Berry were employed on the night shift during the entire periods of their employment. Elenor Marie Stapon and Betty Yorkus were employed on the night shift during a portion of their employment. Rose Swirski might have worked one or two nights but she could not say whether it was before or after she became 18 years of age (R. 441, 449).

from a larger number of 16 and 17 year old girls testifying at the hearing and satisfied me that the respondent should not have employed them without first investigating to ascertain their true age. Certainly, in their case, the respondent had good reason to question their representations of age.

The remaining five, namely, Lucretia Perry, Audrey Ramsey, Lois Wirtz, Maggie Berry and Elenor Marie Stapon, were among those whom I determined at the hearing (Tr., p. 579) were not of such youthful appearance as to cause the respondent to suspect that they were under the age of 18 years. The finding that they were knowingly employed subsequently rests upon facts other than youthful appearance.

In making out her application for employment, Lucretia Perry recorded her date of birth as October 31, 1926, a year in advance of her actual birth date. In contrast with the age of "18" which she also recorded in her application, the date of birth given by her shows that she was then but seventeen years of age. Respondent was thus put on notice of the probability that the applicant might have been seventeen rather than eighteen, which if true precluded her employment in either of its two plants under the terms of the exemption orders. Respondent should have undertaken to resolve the discrepancy in age. Had it done so, it would have found that the applicant was in fact not of age. Its failure to require corroboration of the applicant's age resulted in her employment in violation of the Act.

Audrey Ramsey, who was also sixteen years of age when she applied for employment with the respondent, likewise gave a date of birth (April 6, 1926) indicating that she was seventeen, at the same time giving the conflicting age of eighteen. Lois Wirtz was employed despite the fact that her employment application, while showing the age of

eighteen, recorded her true date of birth, December 25, 1925. With no material difference in the facts, the basis upon which these two underage employees are held to have been knowingly employed is the same as in the preceding case of Lucretia Perry.

Maggie Berry consistently maintained throughout her testimony that she recorded her true date of birth, December 31, 1927, in filling out her application for employment. Although the birth date of "Dec. 31, 1926" is written in on the application, as well as the age of "18", it is plainly evident that the last figure in the year as originally written has been erased and changed from "7" to "6". I have no hesitancy in finding, from the altogether credible and uncontradicted testimony of the employee and the evidence as a whole, that the employee did record her date of birth as she said she did. Why the respondent employed her in spite of the birth date showing that she was seventeen years of age can only be left to conjecture, as must also the identity of the person who altered the employment application and the reason for so doing. In this connection, attention is directed to the statement of counsel for the respondent at the conclusion of the hearing concerning the respondent's inability to locate former war-time personnel for presentation as witnesses who might be also to throw some light on the operation of its employment offices (Tr., beg. p. 629). The best that can be said for the respondent, in any event, is that the employment of Maggie Berry was the result of respondent neglecting to investigate her true age.

A fact upon which the testimony of Elenor Marie Stapon is clear is that about a month after she applied for work at the Cranbury plant of the respondent she furnished to someone in the personnel office, in response to a request that she bring in proof of her age, a baptismal certificate[17]

[17] The certificate is contained in Government Exhibit No. 9.

showing that she was born on May 9, 1925, the date of birth given in her application for employment. The certificate appears to be entirely regular on its face and there is nothing in the record of the case to suggest that it was not reliable evidence of the employee's age. The respondent was entitled to treat it as such. Decision of the Secretary, *In the Matter of Bibb Manufacturing Company,* supra. It is for this reason that I have found her to have been knowingly employed for sixteen days, the extent of her employment while under eighteen years of age according to the certificate, rather than for the full duration of her employment while under eighteen on the basis of her true date of birth.

Counsel for the Government apparently are of the belief, as indicated in the letter submitting the birth certificates, that evidence other than youthful appearance supports the finding of knowing employment with respect to a sixth employee, Madaline Audrey Hartman. I have searched the record without finding any such evidence; nor do I find any evidence of knowing employment with respect to twenty-five other girls who are listed in paragraph VII of the complaint and who presented the appearance of being eighteen years of age or more when testifying at the hearing.

6. On May 23, 1942, a judgment was entered under Section 17 of the Fair Labor Standards Act in the District Court of the United States for the Southern District of New York, with the consent of the respondent, enjoining it from thereafter violating the child labor provisions of that Act. Counsel for the Government offered in evidence a true copy of the judgment[18] for the announced purpose of showing that the respondent had had brought to its attention directly the child labor provisions of the Fair

[18] Government Exhibit No. 6.

Labor Standards Act, similar to those of the Walsh-Healey Public Contracts Act, and particularly Hazardous Occupation Order No. 1 (Tr., p. 594). Counsel for the respondent objected to the judgment as evidence, contending that it was addressed to future violations of the Fair Labor Standards Act, with which respondent is not charged in this proceeding, and that it did not embrace the issue of knowing employment; and further, that the entry of the judgment was without contest and without prejudice or admissions (Tr., pp. 505-9). Also, counsel for the respondent offered in evidence the annual report of the Unexcelled Manufacturing Company, Inc., for the year ending December 31, 1942,[19] and the annual report of the Unexcelled Chemical Corporation for the year ending December 31, 1946,[20] to show that not a single officer or director in office in 1942, when the judgment was entered, is now in office (Tr., pp. 626-8). The decree and the objections thereto have been considered by me, along with all of the other facts and circumstances of the case, in deciding upon the recommendation that I am about to make regarding the application of the ineligible-list provisions of Section 3 of the Act.

Upon the entire record, it is

ORDERED that the respondent Unexcelled Chemical Corporation, formerly Unexcelled Manufacturing Company, Inc., pay to the United States of America the sum of $15,600 as liquidated damages resulting from the employment of underage employees in breach of the child labor stipulations of the Act, as found herein.

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[19] Respondent's Exhibit No. 2.

[20] Respondent's Exhibit No. 3.

Decision of the Hearing Examiner

RECOMMENDED that the Secretary of Labor take the necessary action to relieve the respondent from the application of the sanction provided in Section 3 of the Act.

If no petition for review is filed with the Chief Hearing Examiner within the period prescribed by the Rules of Practice, as amended, this decision shall become final upon the expiration of such period in accordance with the Rules.

CLIFFORD P. GRANT,
Hearing Examiner.

Dated at Washington, D. C.
this 25th day of February, 1949.

[fol. 45] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Case No. 10,612

UNITED STATES OF AMERICA, Plaintiff-Appellant,

vs.

UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC., Defendant-Appellee

On Appeal

ORDER

Upon the motion of Grover C. Richman, Jr., United States Attorney for the District of New Jersey, and the annexed consent of counsel for the defendant-appellee and there being good cause shown for the entry of this order;

It is on this 13th day of December 1951, Ordered that the time for filing the brief of the plaintiff-appellant be and it is hereby extended to January 4, 1952.

McLaughlin, Judge.

We hereby consent to the entry of the above Order.
Lindabury, Steelman & Lafferty, Attorneys for Defendant-Appellee. By William Rowe, A Member of the Firm.

[Stamp:] Received & Filed. Dec. 13, 1951. Ida O. Creskoff, Clerk.

[fol. 46] [Endorsed:] No. 10,612. United States Court of Appeals for the Third Circuit. United States of America vs. Unexcelled Chemical Corporation, formerly Unexcelled Manufacturing Company, Inc. On Appeal. Order extending time for filing appellant's brief to January 4, 1952. Grover C. Richman, Jr., U. S. Attorney, Newark, New Jersey.

[fol. 47] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,612

UNITED STATES OF AMERICA, Appellant

v.

UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC.

On Appeal from the United States District Court for the District of New Jersey

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Argued March 18, 1952

Before McLaughlin, Staley and Hastie, Circuit Judges

OPINION OF THE COURT—Filed April 29, 1952

By STALEY, Circuit Judge:

We are asked to decide whether the two year statute of limitations provided in Section 6 of the Portal-to-Portal Act of 1947 (61 Stat. 87, 29 U.S.C.A. § 255 (Supp. 1951)) is applicable to actions by the United States to enforce the child labor provisions of the Walsh-Healey Act. We hold that the limitation period is not applicable.

The basis of this action is the knowing employment by defendant of minors in the performance of government contracts in violation of the Walsh-Healey Act, 49 Stat. 2036-2039, 41 U.S.C.A. §§ 35-45. Pursuant to Section 5 of that [fol. 48] Act, the Secretary of Labor issued a complaint on April 17, 1947, charging defendant with numerous child-labor violations during the years 1942-1945. After a hearing, as provided by statute, the hearing examiner rendered a decision on February 25, 1949, in which he found that defendant had wrongfully employed minors for a total of 1560 days and was indebted to the United States in the sum of $15,600 as liquidated damages. In January 1950, the Attorney General instituted this action by a complaint filed in the District Court of the District of New Jersey. Upon motions

for summary judgment by both parties, the district court held the action barred by the two year limitation period of Section 6 of the Portal-to-Portal Act.[1]

Section 6 of the Portal-to-Portal Act reads as follows:

> "Any action commenced on or after May 14, 1947, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or *liquidated damages*, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—
>
> "(a) if the cause of action accrues on or after May 14, 1947—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued;
>
> "(b) if the cause of action accrued prior to May 14, 1947—may be commenced within whichever of the following periods is the shorter: (1) two years after the cause of action accrued, or (2) the period prescribed by the applicable State statute of limitations; and, except as provided in paragraph (c), every such action shall be forever barred unless commenced within the shorter of such two periods * * *" 61 Stat 87, 29 U.S.C.A. § 255 (Supp. 1951; emphasis supplied.)

[fol. 49] The crucial issue before us is one of statutory construction: Does the term "liquidated damages" as used in the above section refer to liquidated damages generally or merely to liquidated damages in connection with unpaid minimum wages and unpaid overtime compensation? Our study of the Portal-to-Portal Act in its entirety and its legislative history has convinced us that the clearly manifested intent of Congress was to place a limitation period only on actions for unpaid minimum wages and unpaid overtime compensation and (when permitted by law) any sums recoverable as liquidated damages in such actions. To interpret Section 6 as comprehending suits for liquidated damages by the Attorney General to enforce the

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[1] United States v. Unexcelled Chemical Corp., 99 F. Supp. 155 (D.C. N.J., 1951).

child labor provisions of the Walsh-Healey Act would, in our opinion, radically distort the intent of Congress.

The Walsh-Healey Act of 1936 was enacted to harness the leverage effect of the government's immense purchasing power in the interest of higher labor standards. Endicott Johnson Corp. v. Perkins, 317 U.S. 501, 507 (1943). Section 1 of the Act provides that certain representations and stipulations must be included in all contracts with the government for "the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000." The contractor must agree that all persons employed in the performance of the contract be paid not less than minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed in similar work in the same locality. No more than 8 hours of work a day or 40 hours a week are permitted, subject to certain exceptions. And, more pertinent to our problem here, the employment of boys under 16 and girls under 18 is prohibited. Section 2 of the Act fixes the liability for any breach of the stipulations and representations of the contract and authorizes the Attorney General to institute suits for damages. Violation of the child labor provisions renders the contractor liable in liquidated damages to the United States in the sum of $10 a day [fol. 50] for each minor wrongfully employed. Breach of the minimum wage and maximum hour stipulations renders the contractor liable for the amount of the underpayment due the employee, which sums are held in a special deposit account by the Secretary of Labor to be paid directly to the underpaid employees. The $10 a day in liquidated damages for the wrongful employment of a minor, however, does not inure even indirectly to the benefit of the minor, and is thus realistically a penalty imposed by the United States to enforce the compelling public interest in safeguarding the health of our children.

Two years after the Walsh-Healey Act was passed, Congress enacted the Fair Labor Standards Act, 52 Stat. 1060-1069, 29 U.S.C.A. §§ 201-219, which, *inter alia*, fixes minimum wage rates and maximum hours for employees engaged in commerce or in the production of goods for com-

merce,[2] and prohibits shipments in interstate commerce of goods produced in an establishment where oppressive child labor has been employed.[3] The United States is empowered to enforce the provisions of the Act by criminal prosecutions for willful violations[4] and by seeking injunctive relief.[5] In the case of violations of the minimum wage and overtime provisions, the employee is granted the right to recover from his employer the amount of the underpayment plus an additional equal amount as liquidated damages.[6] But no analogous right is given to minors employed in violation of the child labor provisions, which are enforceable solely by the United States.

The Portal-to-Portal Act of 1947 was a manifestation of Congressional reaction[7] to the decision of the Supreme Court in Anderson v. Mt. Clemens Pottery, 328 U.S. 680 [fol. 51] (1946). The Court there held that time spent by employees walking to work on the employer's premises and time engaged in certain preliminary activities should be included in the compensable workweek, subject to the possible application of the *de minimis* rule. Section 1 of the Portal-to-Portal Acts sets forth at length the findings of Congress and a declaration of policy. The pertinent portion of this Section is as follows:

> "(a) The Congress finds that the Fair Labor Standards Act of 1938, as amended, has been interpreted judicially in disregard of long-established customs, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers with the results that, if said Act as so interpreted or claims arising under such interpreta-

[2] 52 Stat. 1062-1064, 29 U.S.C.A. §§ 206-208.
[3] 52 Stat. 1067, 29 U.S.C.A. § 212.
[4] 52 Stat. 1069, 29 U.S.C.A. § 216 (a).
[5] 52 Stat. 1069, 29 U.S.C.A. § 217.
[6] 52 Stat. 1069, 29 U.S.C.A. § 216 (b).
[7] See § 1 of the Act, 61 Stat. 84, 29 U.S.C.A. § 251 (Supp. 1951) and House Rep. #71, 80th Cong., 1st Sess., U.S. Code Cong. Serv. 1947, pp. 1029, 1030.

tions were permitted to stand, (1) the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital resources of many others * * *; (4) employees would receive windfall payments, *including liquidated damages*, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay; * * *

"The Congress further finds that the varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to great difficulties in the sound and orderly conduct of business and industry.

"The Congress further finds and declares that all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (*except as to liability for liquidated damages*) arise with respect to the Walsh-Healey and Bacon-Davis Acts and that it is, therefore, in the na- [fol. 52] tional public interest * * * that this Act shall apply to the Walsh-Healey Act and the Bacon-Davis Act." 29 U.S.C.A. § 251 (Supp. 1951). (Italics supplied.)

The findings contain not a word about the child labor provisions of either the Fair Labor Standards Act or the Walsh-Healey Act. The committee reports and the debates in both houses are equally silent on the subject. The term "liquidated damages" is first used in subsection (a) (4) of section 1, which is reproduced above. By this statement in the findings and declaration of policy, Congress thus initially makes it clear that the "liquidated damages" with which it is concerned are those recoverable in suits under the Fair Labor Standards Act for unpaid minimum wages and overtime compensation. Later in its findings, Congress declares that the same dangers which have arisen under the Fair Labor Standards Act "may (*except as to liability for liquidated damages*) arise with respect to the Walsh-Healey and Bacon-Davis Acts." This is a clear recognition by Congress that the minimum wage and maximum hours provisions of the Walsh-Healey Act do not allow re-

covery for an additional sum as liquidated damages. But how do we reconcile the parenthetical statement with the provision in the Walsh-Healey Act fixing $10 a day in liquidated damages for child labor violations? Either the parenthetical statement must be dismissed as baldly erroneous or we must conclude that the child labor provisions of the Walsh-Healey Act were completely beyond the scope of the Portal-to-Portal Act. Every manifestation of Congressional intent points unerringly toward the latter interpretation. The Act itself is the best evidence. Other uses of the term "liquidated damages" in the Act are consistent with a limited scope. Sections 3(b) and 11, 29 U.S.C.A. §§ 253 (b) and 260 (Supp. 1951), refer only to liquidated damages under the Fair Labor Standards Act.[8] Even more [fol. 53] revealing is an analysis of the sections which do not specifically employ the term. Sections 9 and 10 are particularly illuminating for, like the limitation of action section, they are broad provisions which go beyond the narrow problem of portal-to-portal suits. The pertinent part of Section 9 is as follows:

> "In any action or proceeding commenced prior to or on or after May 14, 1947 based on any act or omis-

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[8] *Cf.* the use of the term "liquidated damages" in § 2 (e), 29 U.S.C.A. § 252 (e) (Supp. 1951): "No cause of action based on unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, which accrued prior to May 14, 1947, or any interest in such cause of action, shall hereafter be assignable, in whole or in part, to the extent that such cause of action is based on an activity which was not compensable within the meaning of subsections (a) and (b) of this section." This subsection can have no possible application to actions by the United States. But even were we to assume some applicability to actions by the United States under the Walsh-Healey Act, "liquidated damages" must necessarily be interpreted to refer only to liquidated damages in connection with actions for unpaid minimum wages and unpaid overtime compensation under the Fair Labor Standards Act.

sion prior to May 14, 1947, *no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation* under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any administrative regulation, order, ruling, approval, or interpretation, of any agency of the United States * * *." 29 U.S.C.A. § 258 (Supp. 1951). (Emphasis supplied.)

Section 10 is a similar provision for acts or omissions subsequent to May 14, 1947. The effect of these sections is to make good faith reliance on administrative rulings a defense both in civil actions and in criminal prosecutions in which the gravamen of the action is the employer's failure to pay minimum wages or overtime compensation.[9] Although the term "liquidated damages" is not specifically mentioned, liability for liquidated damages under the Fair [fol. 54] Labor Standards Act is clearly included within the purview of these sections since such liability is derived from the "failure of the employer to pay minimum wages or overtime compensation." But broad as these sections are, they are limited to the area of minimum wages and maximum hours, and do not even purport to relate to violations of the child labor provisions of either the Fair Labor Standards Act or the Walsh-Healey Act. Sections 9 and 10 thus represent convincing evidence of the intended scope of the Portal-to-Portal Act.

Inclusion of the Walsh-Healey and Bacon-Davis Acts in the Portal-to-Portal Act was sharply attacked by several Senators on the floor of the Senate.[10] Senator Donnell, who was chairman of the sub-committee which considered the bill and who guided the legislation through the Senate, stated in reply that these two Acts were included to make

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[9] See Statement of House Managers, House Rep. #326, p. 15.

[10] See 93 Cong. Rec. 2247, 2250-2255, 2288-2289, 2352-2353, 2355, 2358.

certain that they would not be utilized to circumvent the amendments to the Fair Labor Standards Act.[11] He feared that employees whose actions under the Fair Labor Standards Act were frustrated by the amendments then enacted would demand that the government institute actions for their benefit under the Walsh-Healey Act. The Walsh-Healey and Bacon-Davis Acts were thus included in the Portal-to-Portal Act to prevent flanking attacks designed to nullify the effect of the amendments to the Fair Labor Standards Act. Section 1 of the Portal-to-Portal Act similarly manifests this intent in stating that the same evils resulting from the interpretation of the Fair Labor Standards Act "may (except as to liability for liquidated damages) arise with respect to the Walsh-Healey and Bacon-Davis * * *."[12] The Fair Labor Standards Act [fol. 55] was the absorbing concern of Congress. Having decided to make modifications in that Act, Congress then merely made corresponding changes in the Walsh-Healey and Bacon-Davis Acts. Since the Portal-to-Portal Act in no way amends the child labor provisions of the Fair Labor Standards Act, the amendments to the Walsh-Healey Act must be similarly limited.[13]

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[11] See 93 Cong. Rec. p. 2363.

[12] See also Report of the House Committee on the Judiciary, Rep. #71, 80th Cong., 1st Sess., U.S. Cong. Serv. 1947, pp. 1029, 1033: "The Walsh-Healey Act also concerns itself in its field with minimum wages and overtime compensation. The Bacon-Davis Act has provisions relating to minimum wages and other conditions of employment. These two acts are therefore affected by the Mount Clemens decision. The situation described herein as to the Fair Labor Standards Act applies to that existing under the Walsh-Healey Act and the Bacon-Davis Act. The same necessity exists there for remedial legislation."

[13] The scope of the limitation of action provision was apparent to those who guided the bill through Congress. Note the following statements by Representative Gwynne and Senator Wiley. Representative Gwynne: "Let us bear in mind that this limitation applies *only to* statutory actions, which seek to recover not only minimum wages or the over-

A study of the legislative history of the Portal-to-Portal Act makes our conclusion even more compelling. The following are portions of the bill (H.R. 2157, as amended) originally passed by the Senate:[14]

"The Congress further finds and declares that all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (*except as to liability for attorney's fees and, in the case of the Bacon-Davis Act, for liquidated damages*) arise with respect to the Walsh-Healey and Bacon-Davis Acts * * *.

"Section 9. Limitations: The Fair Labor Standards Act of 1938, as amended, is further amended by adding at the end of Section 16 the following new subsection:

"'(c) (1) Every claim under this act for unpaid minimum wages, unpaid overtime compensation, or an additional amount as liquidated dam- [fol. 56] ages, * * * shall be forever barred unless, within 2 years after such claim accrued, suit to enforce such claim is commenced * * *.'

"(b) (1) Every claim under the Walsh-Healey Act or the Bacon-Davis Act or [*sic*] *unpaid minimum wages or unpaid overtime compensation, and under the Walsh-Healey Act for an additional amount as liquidated or other damages,* * * * shall be forever barred unless, within 2 years after such claim accrued, suit

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time compensation but an additional amount as liquidated damages, and attorneys' fees and costs." 93 Cong. Rec. 1557. (Italics supplied.) Senator Wiley: "Section 9 (b) provides, similarly, a 2-year Statute of Limitations as to *such wage claims* when they are brought under the Walsh-Healey Act or Bacon-Davis Act." 93 Cong. Rec. 2086. (Italics supplied.) Representative Gwynne introduced H.R. 2157 and was one of the House Managers. Senator Wiley was chairman of the Senate Judiciary Committee to which H.R. 2157 was referred.

[14] The text of this bill is set forth in full at 93 Cong. Rec. 2375-2377.

to enforce such claim is commenced * * *." (Emphasis supplied.)

An examination of the portions of the Senate bill cited above reveals that the bill was based on a misconception, viz., that in actions for unpaid minimum wages and overtime compensation under the Walsh-Healey Act, an additional amount is recoverable as liquidated damages. The error was apparently discovered by the conference committee, which proceeded to make two changes in the bill. First, the parenthetical statement in Section 1 was changed to the version enacted into law. The committee thus recognized that neither the Bacon-Davis Act nor the Walsh-Healey Act allowed recovery of additional sums as liquidated damages in connection with suits for minimum wages and overtime compensation. The clause prescribing a limitation period for claims under the Walsh-Healey Act likewise had to be altered. In making the change, the conference committee merely combined the limitation of action provisions relating to all three acts and simplified the language. In so doing, the present Section 6 was created. Under the limitation provision as originally passed by the Senate, the present action for wrongful employment of minors would not be barred since the reference to "liquidated and other damages" clearly relates to actions for unpaid minimum wages and overtime compensation. The same result was intended to flow from Section 6 of the Portal-to-Portal Act as enacted.

[fol. 57] In so construing the Portal-to-Portal Act, we are fully cognizant of the fact that the Courts of Appeals for the Fourth and Fifth Circuits have reached the opposite conclusion. See United States v. Lovknit Mfg. Co., 189 F. 2d 454 (C. A. 5, 1951) cert. denied 342 U. S. 896; United States v. Lance, 190 F. 2d 204 (C. A. 4, 1951) cert. denied 342 U. S. 896. We do note, however, that the violations complained of in the Lovknit case comprised not only the wrongful employment of minors but also the failure to pay proper overtime compensation. The construction of Section 6 of the Portal-to-Portal Act here adopted apparently was not advanced in either of the above cases, the government contending that Section 6 does not apply to any action by the

United States. If the construction we are adopting had been urged before those courts, different results might have ensued. With all due respect to our brethren of the Fourth and Fifth Circuits, we conclude that actions by the United States to enforce the child labor provisions of the Walsh-Healey Act are not barred by the two-year limitation period of the Portal-to-Portal Act.

The judgment of the district court will be reversed. The cause will be remanded to the district court for further proceedings not inconsistent with this opinion.

A true Copy:

Teste:

——, ——, Clerk of the United States Court of Appeals for the Third Circuit.

[fol. 58] [Stamp:] Received & Filed April 29, 1952, Ida O. Creskoff, Clerk.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,612

UNITED STATES OF AMERICA, Appellant,

vs.

UNEXCELLED CHEMICAL CORPORATION, formerly UNEXCELLED MANUFACTURING COMPANY, INC.

On Appeal from the United States District Court for the District of New Jersey

Present: McLaughlin, Staley and Hastie, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Dis-

trict Court in this case be, and the same is hereby reversed. The cause is remanded to the District Court for further proceedings not inconsistent with the opinion of this court.

Attest: Ida O. Creskoff, Clerk.

April 29, 1952.

[fol. 59] [Stamp:] Received & Filed May 22, 1952. Ida O. Creskoff, Clerk

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable, the Judges of the United States District Court for the District of New Jersey, Greeting:

Whereas, lately in the United States District Court for the District of New Jersey, before you or some of you, in a cause between United States of America, Plaintiff, (Appellant) and Unexcelled Chemical Corporation, formerly Unexcelled Manufacturing Company, Inc.,—Civil Action No. 87-50—a judgment was entered in the District Court on June 29, 1951, which judgment is of record in the office of the clerk of the said District Court, to which reference is hereby made, and the same is hereby expressly made a part hereof, as by the inspection of the record of the said District Court, which was brought into the United States Court of Appeals for the Third Circuit by virtue of an appeal by United States of America agreeably to the Act of Congress, in such case made and provided, more fully and at large appears.

And whereas, the said cause came on to be heard before the said United States Court of Appeals for the Third Circuit, on the said record, and was argued by counsel;

On Consideration Whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed. The cause is remanded to the District Court for further proceedings not inconsistent with the opinion of this court.

April 29, 1952.

[fol. 60] You, Therefore, Are Hereby Commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to

right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Signed and sealed this 22nd day of May in the year of our Lord one thousand nine hundred and fifty-two.

Ida O. Creskoff, Clerk, United States Court of Appeals for the Third Circuit.

[Endorsed:] Civil Action No. 87-50. No. 10,612. United States of America, Appellant, vs. Unexcelled Chemical Corporation, formerly Unexcelled Manufacturing Company, Inc. Copy. Mandate. Received & Filed May 22, 1952. Ida O. Creskoff, Clerk.

[fol. 61] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 62] Supreme Court of the United States, October Term, 1952.

No. —

Unexcelled Chemical Corporation, Formerly Unexcelled Manufacturing Company, Inc., Petitioner,

vs.

United States of America

Order Extending Time to File Petition for Writ of Certiorari

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 26th, 1952.

Tom C. Clark, Associate Justice of the Supreme Court of the United States.

Dated this 22nd day of July, 1952.

[fol. 63] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 27, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. This case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.